

**PROTECT. SERVE. CARE**

# MEMORANDUM

**Date:** April 7, 2019

**To:** Chief Skinner

**From:** Lieutenant Harrison  
Chair, Use of Force Review Board

**Subject:** **FINDINGS: USE OF FORCE REVIEW BOARD FI19-001**

**Employee:** Ofc. Steve Timm

**Board Members:** Lt. Harrison, Chair (Voting member)  
Sgt. Ryan Nelson, Chain of Command Supervisor (Voting member)  
Sgt. Bill Solesbee, Training / Firearms (Voting member)  
Sgt. Ryan Molony, Defensive Tactics (Voting member)  
Lt. Angie San Miguel, Office of Professional Standards (Non-Voting member)  
Leia Pitcher, Eugene Police Deputy Auditor (Non-Voting member)  
Marcia Pendleton, Communications Supervisor (Non-Voting member)

**Policies Reviewed:** 800 Use of Force  
801 Use of Force Reporting  
812 Department Firearms  
1203 Body-Worn Video

**Finding:** Ofc. Steve Timm – **WITHIN POLICY**  
Ofc. Aaron Johns – **WITHIN POLICY**

*Handwritten notes:*  
C. Harrison 4/18/19  
J. Berreth DC Concur.  
A. Jepson DC Concur.

A use of force review board was appointed to review the facts and circumstances of Eugene Police Officer Steve Timm's use of deadly force on January 11<sup>th</sup>, 2019 at approximately 1045 hours. All board members were present and participated in discussions. Voting members made independent decisions for each policy being reviewed. The involved employees were not compelled to appear before the board.

The board was provided a thumb drive of the complete case files, photographs, script of timelines, police reports, evidence reports and lab reports. Sgt. Berreth presented a PowerPoint report that summarized the events of January 11<sup>th</sup> in chronological order and then reviewed the applicable policies.



## **Summary:**

On January 11, 2019 at 1027 hours, SRO Timm received a phone call from the principal of Cascade Middle School, reporting a custody dispute at the school. Officer Timm responded to the school to investigate. SRO Johns also responded as Officer Timm's cover officer.

Officer Timm arrived and was able to review existing court paperwork as provided by the student's mother. The court paperwork indicated the mother had the legal authority over the child, including the decision making ability over education, medical treatment, etc.

Officer Timm received information from the mother that the adoptive father, Charles Landeros was anti-government and anti-police. Landeros had been called by school administrators, and had arrived at the school.

Officer Timm communicated with Landeros, advising him of the instructions contained within the court documents. Landeros became uncooperative with the investigation, and Officer Timm asked him to leave the school.

Landeros was initially compliant with Officer Timm's request to leave. After walking out of the main office, Landeros stopped in the hallway. Landeros began to argue with Officer Johns that he did not have the authority to make him leave the school. The hallway was beginning to fill with middle-school students. As Landeros argued with officers, he spotted his adopted daughter, and began to yell her name loudly.

In an effort to prevent further disruption inside the school, Officer Johns forcibly pushed Landeros through the doors and outside the school. Landeros actively resisted Officer Johns, and was told he was under arrest. Landeros continued to fight against Officer Johns. During the ensuing struggle, Landeros produced a full size handgun which had been concealed in his right waistband. Landeros fired the gun multiple times as Officer Johns struggled for control of the weapon. Officer Timm fired his duty weapon two times. The initial round struck the ground nearby. The second round struck Landeros in the left side of his head. Landeros died at the scene from his wound. Ofc. Johns and Ofc. Timm prepared to administer aid, but observing the suspect's condition realized those efforts would be futile. They did summon medics to the scene.

### **Policy/Finding: POM 800- Use of Force**

**Ofc. Aaron Johns – Within Policy**  
**Ofc. Steve Timm – Within Policy**

The board considered this policy in its entirety. This incident was divided into two uses of force. When Landeros refused to leave the school as lawfully instructed, Ofc. Johns shoved him out the door as to avoid a confrontation inside the school in close proximity to students. When Landeros resisted he was told he was under arrest and began offering even more resistance. Ofc. Johns shoved him against a wall in an effort to control him and to take him into custody. This use of force appeared reasonable to the board as a way to control the scene and make an arrest.

When Landeros produced a handgun and began firing, another use of force decision point was reached. Both officers instantly recognized that their lives and the lives of others at the school were in danger. Each officer said they feared they were going to be shot and expressed concern for the students that were in the area.

The board members felt Ofc. Johns' use of force to make an arrest and defend himself and Ofc. Timm from imminent serious physical injury was reasonable and within policy. The board members felt Ofc.

Timm's use of deadly force to defend himself, Ofc. Johns and the public from Landeros was reasonable and within policy.

**Policy / Finding: POM 801 – Use of Force Reporting    Ofc. Steve Timm – Within Policy**

Ofc. Johns's use of force did not rise to the level of a "Reportable incident" under this policy. Therefore, his adherence to the policy was not evaluated as it did not apply. When Ofc. Johns broadcasted on the radio "Shots Fired", it sufficiently alerted both supervisors and command of the incident. This notification generated a response from IDFIT. The use of force was documented by IDFIT and Sgt. Berreth made the required Blue Team entry. The board unanimously found that the use of force was reported within policy.

**Policy / Finding: POM 812 – Department Firearms    Ofc. Steve Timm – Within Policy**

Ofc. Johns did not use his firearm in this incident. Therefore, his adherence to the policy was not evaluated by the board as it did not apply. Ofc. Timm used his department issued firearm to shoot Landeros when deadly force was justified (see use of force section above). He qualified with his firearm on 12/3/18 which met the policy requirement that he qualify semi-annually. Sgt. Solesbee confirmed Ofc. Timm was carrying his assigned handgun and ammunition in an approved configuration. The board unanimously felt that Ofc. Timm was within policy regarding department firearms.

**Policy / Finding: POM 1203 – Body-Worn Video      Ofc. Aaron Johns – Within Policy  
Ofc. Steve Timm – Within Policy**

Ofc. Timm activated his body-worn video when he initially contacted Landeros in the Principal's office. Ofc. Johns did not activate his body-worn video upon initial contact. However, under policy 1203.7.1c it did not appear this was a contact that was initially required to be recorded. It was not a stop, or an investigation into a crime, it was a custody question over civil paperwork. Ofc. Johns BWV was activated, possibly inadvertently, when he attempted to stop and arrest Landeros after he refused to leave the school. The board unanimously found that both officers were within policy in regards to Body-Worn Video.

*At the conclusion of the policy discussion and voting the board addressed the below listed topics.*

**Training:**

See communication section below.

**Equipment:**

It was noted that during the struggle Ofc. Johns' BWV camera fell off of his outer vest. He had been using the more secure style we currently issue and not the magnet style. Several board members agreed that cameras falling off seems to be a common issued when Officers are physically struggling with suspects.

It was brought up by Leia Pritcher that the BWV was hugely important in this case. The board members agreed that BWV was very helpful in determining what occurred during this incident.

**Communications:**

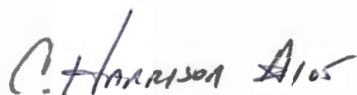
It was mentioned that there was a delay from the time Ofc. Timm asked for Code 3 cover until someone was dispatched. Marcia Pendleton said this was because Ofc. Timm did not use his designator, and the dispatcher working typically worked nights and did not recognize his voice. It took her a moment to figure out who was asking for Code 3 cover which caused the delay. When the dispatcher sent units to cover, she sent them to "Cascade Middle School" and did not provide the address. Some Officers mentioned that they weren't sure where Cascade Middle School was and the street address would have been helpful. It was decided that Marcia would follow up with the address issue, and patrol officers need to be reminded to give their location when asking for code-3 cover.

#### **IDFIT Investigation:**

The board had two questions which were not answered by IDFIT investigation / reports. First, Ofc. Timm referred to a large backpack that Landeros wore into the school. Ofc. Timm thought it was odd and was one of the things that made him feel uneasy about Landeros. It was never reported what was in the backpack. Board members thought there was ammunition and medical supplies inside but that couldn't be confirmed. Second, there were lots of photos of a bullet casing in the school parking lot quite a distance from where the encounter took place. Board members were unable to determine via the IDFIT investigation where this casing came from. The IDFIT investigation sufficiently determined what occurred during the incident.

#### **Conclusion:**

The encounter faced by Ofc. Johns and Ofc. Timm was dynamic and unexpected. Both officers acted decisively, to stop a deadly threat to themselves and people present at the school. Their actions were consistent with training, policy and community expectations. Ofc. Timm's use of deadly force during this incident was determined by the board to be **WITHIN POLICY**.

A handwritten signature in blue ink that reads "C. Harrison" followed by a stylized flourish.

Lt. Chris Harrison  
Patrol Division  
Eugene Police Department

## COLEMAN Cindy S

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**From:** SAN MIGUEL Angie S  
**Sent:** Wednesday, April 24, 2019 10:28 AM  
**To:** COLEMAN Cindy S  
**Subject:** FW: Findings: Use of Force Review Board

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**From:** SKINNER Chris  
**Sent:** Wednesday, April 24, 2019 10:24 AM  
**To:** TIMM Steven C <STimm@eugene-or.gov>; JOHNS Aaron R <AJohns@eugene-or.gov>  
**Cc:** HARRISON Christopher R <CHarrison@eugene-or.gov>; NELSON Ryan E <RNelson@eugene-or.gov>; SOLESBEE Bill M <BSolesbee@eugene-or.gov>; MOLONY Ryan C <RMolony@eugene-or.gov>; SAN MIGUEL Angie S <ASanMiguel@eugene-or.gov>; PITCHER Leia K <LPitcher@eugene-or.gov>; PENDLETON Marcia C <MPendleton@eugene-or.gov>  
**Subject:** Findings: Use of Force Review Board

Officer Timm and Officer Johns,

I have reviewed the memorandum dated April 7, 2019 and concur with the Use of Force Review Board's findings that your actions of January 11, 2019 are **Within Policy**.

You both performed admirably under tremendous stress in a rapidly evolving life and death incident. Thank you for your commitment to the safety of this community and your ongoing dedication to the training that allows for your success each and every day.

Chief Chris Skinner  
Eugene Police Department  
300 Country Club  
Eugene, OR 97401  
Office: 541-682-5102  
[www.eugenepolice.com](http://www.eugenepolice.com)

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## Eugene Police Auditor's Office

### Memorandum

Date: June 3, 2019  
To: Chris Skinner, Chief of Police  
From: Leia Pitcher, Deputy Police Auditor (OPA) *LP*  
Subject: Case Number FI19-001 (Use of Deadly Force Review)  
Involved  
Employees: Officer Steve Timm  
Officer Aaron Johns

#### Incident Overview:

On January 11, 2019, Officer Steve Timm (a School Resource Officer assigned to Bethel School District) received a phone call from the principal of Cascade Middle School, reporting a custody issue at the school. Officer Timm went to the school to look into the issue, and Officer Aaron Johns (also a School Resource Officer, assigned to Churchill High School) also responded to the school as a cover officer.<sup>1</sup>

Officer Timm stated in his interview that when he arrived at the school, the principal introduced him to Shayla Landeros, the involved mother. He reviewed the court paperwork that she provided and found that it clearly indicated that she was the parent with sole legal custody, including the authority to make decisions about education. Officer Timm stated in his interview that as he got up to leave Shayla,<sup>2</sup> she mentioned that Charles Landeros (the other involved parent) was under investigation from the FBI and hated police and the government.<sup>3</sup>

Officer Timm then went to speak with the principal, who stated that Charles Landeros<sup>4</sup> had arrived at the school (they had been contacted by the school) and was waiting in the principal's office.

Officer Timm activated his body camera before contacting Landeros. Officer Timm spoke with Landeros about the court paperwork provided by Shayla, and Landeros acknowledged that that was the current custody situation as ordered by a court. Landeros asked Officer Timm if the court order could permit Shayla to remove their daughter from Cascade, and Officer Timm affirmed that that was the case. Landeros asked if they could take their daughter from the school, and Officer Timm stated that the court paperwork indicated that Landeros could not. Both the principal and Officer Timm stated to Landeros that Shayla had not indicated that she would remove their daughter from the school.

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<sup>1</sup> The majority of this incident summary is from the body-worn video of Officer Timm, which was vital to review of this incident. Other sources are noted where appropriate.

<sup>2</sup> I refer to Ms. Shayla Landeros as "Shayla" throughout, in order to avoid confusion with Charles Landeros.

<sup>3</sup> The FBI confirmed, during the course of the investigation into the use of deadly force, that they had open reports on Charles Landeros. However, the existence of those reports were not known to the officers at the time of this incident, outside the statement from Shayla to Officer Timm.

<sup>4</sup> It is my understanding that Charles Landeros used they/their pronouns. I am choosing to write "Landeros", rather than using a gendered signifier, out of respect for their preferred pronouns.

Officer Timm went on to inform Landeros that they could petition the court to change the custody agreement, and Landeros indicated that they would look into that option.

At this point, the principal indicated that she would check with Shayla to see if she intended to take their daughter from the school, and to see if they could come up with a plan for the day. The principal left the office as Officer Timm asked Landeros when their daughter had come to their home (the daughter had previously been living with Shayla). Landeros asked why Officer Timm was asking the question, and then stated that they did not want to answer. Officer Timm then asked Landeros to leave, and stated that if Landeros would not answer questions, then they should leave.

Officer Timm stated in his interview other reasons that contributed to his decision to ask Landeros to leave. First, Officer Timm knew that Shayla Landeros had authority to remove the daughter from the school, and his understanding was that she may do that out of concern for the daughter's mental health. Officer Timm had also noticed that Landeros was carrying a knife, in addition to a bulky backpack. Officer Timm had also noticed that the woman who had accompanied Landeros into the office, but had then left, was also wearing a bulky backpack. Officer Timm was suspicious about the backpacks, given that he believed they had driven to the school. Officer Timm stated that he also had a feeling that there was some animosity between the parents, and that Landeros may be "defiant" about Shayla exerting her authority over their daughter.

When asked to leave by Officer Timm, Landeros left the principal's office. Officer Timm conferred with Officer Johns for a moment and informed him that Sergeant Nelson (the School Resource Team supervisor) was on his way to the school. Officer Timm also informed Officer Johns that Landeros had anti-government and anti-police views, and informed him of the FBI investigation. Officer Timm stated to Officer Johns, "he [they] needs to leave the school." From the video, it appeared that the officers noticed at that point that Landeros was standing in the hall and had not left the building.

Officer Johns then approached Landeros. His body camera was not yet activated, but Officer Timm's camera shows Officer Johns apparently speaking with Landeros for a moment before Officer Timm approached. Landeros stated to Officer Timm that they were waiting for the principal and wanted to speak with the principal before they left. Landeros asserted that the police did not have jurisdiction in a school. They stated, "if the principal has not asked me to leave...". Officer Timm asked Landeros to listen to him. Landeros, at that point, noticed their daughter and shouted her name. They began to walk past the exit doors and toward their daughter, who was in the hallway.

Landeros shouted to their daughter a few times, at which point Officer Johns placed his hands on Landeros' upper arms in an attempt to move them toward the exit doors, out of the school. Landeros repeated their daughter's name as Officer Johns moved them toward the doors, and Officer Timm stated "you're going to end up getting arrested."

Landeros continued to shout their daughter's name, and "Let's go!" as Officer Timm moved them out of the doors of the school. Officer Timm followed the two out of the door. Landeros shouted their daughter's name again as Officer Timm stated that Landeros was under arrest, and Officer Timm moved Landeros to the wall outside of the entrance to the school.

Landeros began shouting "Let go of me!" and spun away from Officer Johns' grip, towards the parking lot. This momentum appeared to take Landeros and Officer Johns to the ground, at which point Landeros drew out a handgun and fired twice. One shot was clearly in the direction of Officer Timm, and the other went up and away from the school entrance.

Officer Timm then drew his weapon. He stated in his interview that he pulled his first shot, as he was concerned that he would accidentally shoot Officer Johns. Officer Timm stated that he was very concerned about how dangerous this situation had become, with rounds going off directly outside the school. He then aimed his next shot at close range to Landeros's head and fired. Landeros stopped struggling immediately.

Landeros' daughter had followed them out of the school and was very close to the struggle when shots were fired. In addition, Landeros' partner approached the school when she heard the shots, and nearly immediately was close to the scene. The daughter was ordered back into the school, and the school was placed on lockdown.

Officer Timm aired over his radio that shots had been fired, and Officer Johns requested Code 3 medics. Officers attempted to provide first aid, but Officer Johns could not find a pulse. Sergeant Nelson was the first supervisor on the scene. He attempted to move Landeros' partner (later identified as Brynn Powell) away from the scene. Uniformed officers ultimately arrived and detained her. The Interagency Deadly Force Investigation Team was activated and took control over the scene.

#### Process Summary:

When an EPD employee uses deadly force that results in serious physical injury or death, the Lane County Interagency Deadly Force Investigation Team (IDFIT) is called to investigate. Notifications are made to several parties, including the Auditor's Office. In this incident, our office was notified in a timely manner, and I responded to the scene.

IDFIT is in charge of the criminal investigation - in other words, whether the involved use of deadly force was a criminal act or not. The Lane County District Attorney reviews the final IDFIT investigation to determine whether the incident constituted a violation of criminal law.

Following the close of the IDFIT investigation, the investigation is given to EPD Internal Affairs and our office. We review that investigation for thoroughness and completeness, with a focus on whether any policy violations occurred (rather than criminal violations). Any further investigation is performed by EPD Internal Affairs, with our office as a monitor. The EPD Police Chief convenes a Deadly Force Review Board to review the completed investigation and issue findings to the Chief as to whether policies were violated, whether policies and/or training need to be updated, or any other issues raised during the incident and ensuing investigation. Our office is invited to participate in Board discussions as a non-voting member and may also make recommendations to the Chief.

In this case, the Board was convened on April 2, 2019, to review the officer-involved shooting at Cascade Middle School on January 11, 2019. Lieutenant Harrison served as the Chair of the Board. Lieutenant Harrison's memo dated April 7, 2019, accurately reflects the discussion and conclusions of the Board; namely, that the involved employees' actions were within policy. I concur.

#### Auditor's Office Responsibilities:

Auditor's Office participation in critical incidents and reviews of uses of deadly force is set out in City Code. E.C.C. 2.454(2) states that "[t]he police auditor shall receive timely notification of critical incidents to enable him/her, or a qualified designee, to report to the scene of critical incidents." The next subsection mandates that the Auditor "shall participate in use of force review boards." E.C.C. 2.454(3).

City Code also provides for the Auditor's Office, with collaboration from the Civilian Review Board (CRB), to designate certain cases as "community impact cases." Where the auditor has identified a case as a community impact case, and the CRB has accepted the case as such, review is slightly different than it is for a typical closed case. Upon the adjudication of a community impact case, the CRB shall be provided all materials concerning the case for review. Following review, the CRB:

shall do one or more of the following:

(a) Concur with the case adjudication;

(b) Develop recommendations regarding the handling of the complaint and the investigation process, and/or identify other relevant policy or procedural issues for further consideration;

(c) Require the city to reopen the investigation if it finds either:

1. The investigation was incomplete or inadequate, and the civilian review board has reason to believe that additional investigation is likely to reveal facts that could change the case adjudication; or

2. The adjudication reached by the city is not supported by substantial evidence.

E.C.C. 2.244(4).



Immediately following this incident, there were calls from some in the community to designate this investigation as a community impact case. That path was not chosen for review of this incident. In short, at the time the community impact case ordinance was considered, EPD was still the organization that investigated EPD uses of deadly force. The Auditor's office was created to have jurisdiction over all EPD employees, and the CRB was created with the power to review any case involving a sworn officer. In 2007, it would have made sense for a community impact case designation for an investigation of deadly force, because the CRB would be able to take the actions delineated above, which are only permitted in a community impact case.

However, around the same time as the community impact case was enacted, the Oregon state legislature passed a bill that changed how police uses of deadly force are investigated. In Lane County, IDFIT are the lead investigators. IDFIT is composed of employees of agencies throughout Lane County, not just EPD. Because the investigation is not performed by EPD employees, the CRB and the Auditor's Office have very limited power over that investigation.

Our office consulted with CRB members regarding the consideration of this case, and whether it would serve the community to designate it as a community impact case. We considered the request for that designation seriously, and ultimately determined that review of the closed case would be the most appropriate route forward. The CRB plans to review this closed case at its June meeting.

#### Analysis:

The Use of Force Review Board examined whether the involved employees' actions complied with EPD's general use of force policies and, more specifically, whether Officer Timm's use of deadly force against Landeros complied with EPD policy. This memo will follow a similar organization; first examining the involved employees' actions leading up to the deadly force confrontation with Landeros, and then specifically Officer Timm's use of deadly force.

#### A. Interactions Prior to the Use of Deadly Force

In general, a police officer's actions in any situation are reviewed using a "reasonable officer" standard: given the totality of the circumstances known to the officer at the time of the incident, were the actions taken those that a reasonable officer would undertake? EPD policy dictates that "officers will use only that force that reasonably appears necessary, given the totality of the circumstances perceived by the officer at the time of the event, to effectively gain control of an incident." POM 800.2. In determining the reasonableness of a use of force, the policy states that the force must be "objectively reasonable:"

Any interpretation of reasonableness must allow for the fact that police officers are often forced to make splitsecond decisions in circumstances that are tense, uncertain, and rapidly evolving with regard to the amount of force that is necessary in a particular situation. Facts later discovered, but unknown to the officer at the time, can neither justify nor condemn an officer's decision about the use of force.

POM 800.2.2. This comports with Supreme Court precedent, originally set out in *Graham v. Connor*, 490 US 386 (1989). The question is whether the officers' actions are objectively reasonable in light of the facts and circumstances at the time, without regard to the officers' underlying intent or motivation. *Connor* at 397. The test for reasonableness is based on the totality of the facts and circumstances of each case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight. *Connor* at 396.

The IDFIT investigation included body-camera video recordings from both officers (although Officer Johns' video was not activated until later in the contact), interviews with several witnesses, and interviews with the involved employees. It was thorough and provided sufficient information to make an informed decision about whether the involved employees' actions complied with policy and law.

We reviewed Officer Timm's decision to remove Landeros from the school to determine whether that decision comported with EPD policy and training. Review of that decision is based on the reasonable officer standard, as set out above, in light of the facts and circumstances known to the officer at the time. At the time of Officer Timm's decision to remove Landeros, he understood from Shayla that Landeros had open FBI investigations on them for anti-government and anti-police views. Officer Timm had observed a knife on Landeros, and he saw that Landeros was carrying a large backpack despite having driven to the school. Most importantly, Officer Timm knew that the court had granted Shayla sole authority to make decisions over the daughter's education. Officer Timm knew that Landeros could not legally interfere if Shayla decided to remove their daughter from the school, and he was concerned that Landeros would be defiant if Shayla made that decision. Further, as he knew Landeros was armed with a knife, Officer Timm knew that any defiance could result in injury. That this was all taking place in a school was also of concern to Officer Timm.

Given the above, I find that Officer Timm's decision to ask Landeros to leave the school was reasonable. Officer Timm had the authority to make that request, and the request was reasonable under the circumstances.

Next, we reviewed Officer Johns' decision to physically remove Landeros from the school, to determine whether his actions comported with EPD policy and training. Officer Johns' actions were also reviewed under the reasonable officer standard above. From the video, it appears that Officer Johns did not put hands on Landeros until Landeros began shouting their daughter's name. Landeros had also begun arguing with officers at that time about whether officers had the authority to ask them to leave. Officer Johns also stated in his interview that he had observed students beginning to fill the hallway and assumed it was a passing period; Officer Johns was concerned that Landeros may begin a physical fight inside the school, where children could easily be hurt. In his interview, Officer Johns stated: "And so then we put hands on and shoved him [them] out the door because at this point it's unsafe, and I'm not going to get into a fight with someone in a front entranceway with all these kids around." Transcript at page 8, lines 16-19.

The *Graham* factors include the severity of the crime at issue, whether there is an immediate safety threat, and whether the subject is actively resisting or attempting to evade arrest. At the time Officer Johns moved Landeros out of the school, the severity of the involved crime was relatively low - trespass and disorderly conduct. However, Landeros' refusal to speak with officers and their calling out to their daughter contributed to Officer Johns' concern for the safety of the students in the building. Landeros responded to Officer Johns' initial touch with pushing back and shouting louder, as shown in the video. Officer Johns' concern for the safety of the students, and Landeros' escalation of resistance, lead me to determine that Officer Johns' actions were reasonable under the circumstances.

We also reviewed Officer Timm's and Officer Johns' decision to physically effect the arrest of Landeros, to determine whether that decision and the force used complied with EPD policies and law. The arrest and use of force to try to place Landeros in custody was also be reviewed with the reasonable officer standard set out above.

This was a dynamic situation that continually escalated as Officer Timm and Officer Johns attempted to move Landeros out of the school and place them under arrest. Landeros continued to shout their daughter's name, including shouting "Let's go!" This was despite their acknowledging that they did not have the legal authority to make educational decisions for their daughter. Landeros continued to push back against the officers' physical contact, and did not offer any indication that they would become subdued or be able to have a discussion with the officers.

EPD policy, as stated above, permits officers to use force reasonably necessary under the circumstances in order "to effectively gain control of an incident." The officers in this case escalated their physical contact with Landeros after lower levels of physical force failed to gain control over the incident. Landeros continued to pull their arms away and attempt to move away from the officers as they moved toward the wall.

As Officer Timm and Officer Johns were attempting to move Landeros toward the wall and effect their arrest, the situation continued to escalate. Landeros' potential crimes now included possibly

attempting to take their daughter from the school without legal authority to do so. The density of surrounding people had diminished when they exited the school, but there was still a risk of a physical fight resulting in harm to others, as they were still on school grounds, with Landeros' daughter and potentially other students and school community members around. Finally, Landeros continued to actively resist arrest. Therefore, under the *Graham* factors, the officers' use of physical force to attempt to effect the arrest of Landeros appeared reasonable and within policy and law.

#### B. Use of Deadly Force

As stated above, when the officers and Landeros were struggling near the exterior wall of the entryway to the school, Officer Timm saw that Landeros had a gun at their waistband. The video shows Landeros drawing their firearm and firing it. Officer Johns was attempting to grab Landeros' shooting hand and deflect the shots, but one went up high into the neighborhood, and the other appeared to barely miss Officer Timm. Officer Timm drew his weapon and ultimately shot Landeros at close range in the head.

The United States Supreme Court recently restated its standard of review for police use of deadly force, in *Kisela v. Hughes*, 584 US \_\_\_ (2018). In that case, the Court reiterated its holding in *Tennessee v. Garner*, 471 U. S. 1 (1985), that "[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Id.*, at 11. The *Kisela* Court then restated the *Graham* test as a more specific review for police use of force, including deadly force:

whether an officer has used excessive force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Ibid.* And "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.*, at 396-397.

At the time Officer Timm used deadly force against Landeros, he knew they were at a school, during school hours, and that Landeros had not engaged verbally with him when Officer Timm had tried to speak to him inside. Officer Timm knew that he had observed a knife on Landeros when he first saw them in the principal's office. Officer Timm knew that Landeros was engaged in a wrestling match on the ground with Officer Johns. And finally, Officer Timm knew that Landeros possessed a gun and had just fired it, once in his direction, and once away from the school, with an unknown target.

Officer Timm's choice to use deadly force in that moment was the only reasonable option available to him at the time. I therefore recommend that his use of deadly force be adjudicated as within policy.

#### Recommendation:

I recommend that Officer Timm's and Officer Johns' actions be adjudicated as within policy.

#### Additional Issues:

The body camera footage of this incident was vital to its review. The potential for inaccurate, polarizing narratives existed in this case, and having video of the interaction helped immeasurably in presenting the facts of what actually occurred. Video is not perfect; it does not show all points of view. But in this case, it was invaluable.

It is clear from our review of this incident that the involved officers acted in reasonable fear for their lives and the lives of others, protecting themselves and others from a dangerous situation. It is also clear that this incident resulted in loss and profound grief for many members of our community. It is

tragic that this incident ended in the way it did; I am also sincerely grateful that it did not end worse than it did. It is my sincerest hope that the transparency and accountability provided by the Auditor's office and the oversight system can help provide clarity to the community.

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